CR 15

(1) (4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Single Bench

CIVIL REVISION NO. 182 /2004

APPLICANT DEFENDANT : Sukhiram, Aged about 55 years, S/o. Ghanaram Sahu, R/o. Kumharpara, Mahasamund, Tahsil & District Mahasamund

VERSUS

RESPONDENTS/ PLAINTIFFS :

1] Kumaribai Aged about 50 years, Wd/o. Kanhaiyalal, R/o. Mahasamund (Chhattisgarh)

2] Ku. Maya, Aged about 27 years, D/o. Kanhaiyalal, R/o. Mahasamund (Chhattisgarh)

3] Smt. Manju, Aged about 25 years, W/o. Nandkumar, R/o. Khataili, Tahsil & District Raipur (C.G.)

4] Ku. Tikeshwari, Aged about 23 years, D/o. Kanhaiyalal, R/o. Mahasamund, Tahsil & District Mahasamund (C.G.)

5] Ku. Toshan, Aged about 20 years, D/o. Kanhaiyalal, R/o. Mahasamund, Tahsil & District Mahasamund (C.G.)

P.R. No. 39-35/04
Presented by Shri Vaibhav Vishwakarma
dated 01-11-2004

REVISION PETITION U/S. 115 OF CODE OF CIVIL PROCEDURE

XI-HC-22

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CR 182/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

28.11.2005:

Shri Manoj Paranjape counsel for the applicant.

The applicant has preferred this revision petition against the order dated 14.9.2004 passed by Additional District Judge, Mahasamund in MCA No. 19/2002 arising out of the order dated 27.8.2001 passed in Civil Suit No. 80/2001 by the trial Court which was dismissed as abated because the legal heirs of the deceased/plaintiff who died on 2.10.2000 were not brought on record till 11.3.2001. An application for the same purpose was filed by the legal heirs of the plaintiff. The ground raised for condonation of delay in filing the application for bringing the LRs on record was that the heirs were not aware of the pendency of the suit instituted by the original plaintiff. However, the above application was rejected by the trial Court recording a finding that the legal heirs of the original plaintiff failed to prove that they were not aware of the pendency of the suit. It is also observed in the order of the trial Court that the original plaintiff had died as back as on 2.10.2000 but the counsel continued to represent deceased/plaintiff till 5.3.2001.

Learned counsel for the applicant submits that the appellate Court ought not to have interfered with the finding of the trial Court as it is not open to the appellate Court to interfere with the finding of fact recorded by the trial Court unless there are cogent reasons for the same and in support of this submission he relied upon the decision in the matter of **Ganga bai Vs. Vijay Kumar and others reported in 1974 MPLJ, 629**.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(26)

आदेश पत्रक

मामला क्रमांक CR 182/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The fact that the counsel for the plaintiff continued to appear in the proceedings before the trial Court in spite of his death establishes the contention of the legal heirs of the plaintiff that they were not aware of the pendency of the above suit.

Thus the finding of the Court below that the reason assigned for delay in filing the application for bringing the LRs of the plaintiffs on record was sufficient, cannot be faulted. The facts and circumstances of the case cited by the counsel for the applicant are quite different and it has no application to the present set of facts. Even otherwise, in the matter for condonation of delay in bringing LRs on record has to be considered liberally and it would be always in the interest of justice to decide the suit on merit.

In view of above, I do not find any illegality in the impugned order which requires interference from this Court. Accordingly, the revision is dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

[पीछे देखिये